

**Notice of Allowability****Application No.**

09/725,957

**Examiner**

David H Kruse

**Applicant(s)**

HARRIS ET AL.

**Art Unit**

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 20 March 2004.
2. ☒ The allowed claim(s) is/are 1,5-7,10-12,15-17 and 20-22.
3. ☒ The drawings filed on 11/30/00, Figs 1-6 & 1/27/03, Figs 7-9 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets" ) must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948 ) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date SAME.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jeffrey L. Ihnen on 10 June 2004.

The application has been amended as follows:

At claim 1, line 1, "A" has been replaced with -- An isolated, --, and at line 2, -- cell -- has been inserted after "host".

At claim 5, line 3, ":" has been deleted.

At claim 6, line 2, "will encode" has been replaced with -- encodes --.

At claim 10, line 2, ":" has been deleted.

At claim 11, line 2, "will encode" has been replaced with -- encodes --.

At claim 12, lines 2-3, the phrase "infection by *Fusarium* species which produce" has been deleted.

At claim 16, line 2, "will encode" has been replaced with -- encodes --.

Claim 17 (Amended) A transformed seed [Transformed seeds] from the plant of [as defined in] claim 12.

Claim 20 (Amended) A transformed seed [Transformed seeds] from the plant of [as defined in] claim 15.

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Claim 21 (Amended) A transformed seed [Transformed seeds] from the plant of of  
[as defined in] claim 16.


At claim 22, line 2, "as defined in" has been replaced with -- of --, and at line 5, --  
of claim 1 -- has been inserted after "acid".

2. In an interview with Jeffery Ihnen on 10 June 2004, Applicant's attorney  
conveyed that Applicant approved the changes to the claims, see attached interview  
summary.

3. Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571)  
272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m.  
to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Dr. Amy Nelson can be reached at (571) 272-0804. The fax telephone  
number for this Group is (703) 872-9306 Before Final or (703) 872-9307 After Final.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the Group Receptionist whose telephone number is  
(571) 272-0547.

  
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David H. Kruse, Ph.D.  
10 June 2004